

1 Michael J. Gearin, WSBA # 20982
2 David C. Neu, WSBA # 33143
3 Brian T. Peterson, WSBA # 42088
4 K&L GATES LLP
5 925 Fourth Avenue, Suite 2900
6 Seattle, WA 98104-1158
7 (206) 623-7580

Honorable Christopher M. Alston
Chapter 11
Hearing Location: Rm. 7206
Hearing Date: Friday, October 18, 2019
Hearing Time: 9:30 a.m.
Response Date: Time of Hearing

7
8 UNITED STATES BANKRUPTCY COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT SEATTLE

11 In re:

12 NORTHWEST TERRITORIAL MINT, LLC,

13 Debtor.
14 Debtor.

Case No. 16-11767-CMA

15 RESPONSE TO PAULA AND RICHARD
16 PEHL'S OBJECTION TO MOTION TO
17 APPROVE SETTLEMENT WITH
18 BRADLEY COHEN AND COHEN ASSET
19 MANAGEMENT, INC. AND KATHRYN
20 A. ELLIS AND TO AUTHORIZE SALE
21 OF SEIZED PROPERTY

22 Mark Calvert, Chapter 11 Trustee of Northwest Territorial Mint, LLC (the “NWTM
23 Trustee”) responds to the objection (the “Objection”) filed by Paula and Richard Pehl (the “Pehls”)
24 to his Motion to Approve Settlement with Bradley Cohen and Cohen Asset Management, Inc. and
25 Kathryn A. Ellis and to Authorize Sale of Seized Property (the “Motion”) as follows:

26 The Pehls present a long and wide ranging narrative opposing the settlement reached by the
NWTM Trustee, the Erdmann Trustee and the Cohen Parties (the “Settlement”), none of which forms
a basis for rejection of the Settlement. The Pehl's first argue that the Settlement cannot be approved
because ownership has not been established, when, in fact, the very purpose of the Settlement is to
resolve the contested issue of whether the Seized Property belongs to the NWTM estate, the Erdmann
bankruptcy estate, or Ross Hansen, subject to the Cohen Parties' judgment. There is no evidence that
any of the Seized Property belongs to any other party. All of the parties to the Settlement Agreement

RESPONSE TO PEHL OBJECTION - 1
502544238 v3

K&L GATES LLP
925 FOURTH AVENUE
SUITE 2900
SEATTLE, WASHINGTON 98104-1158
TELEPHONE: (206) 623-7580
FACSIMILE: (206) 623-7022

1 recognize that there are substantial evidentiary issues related to ownership as among them. Needless
2 to say, nametags were not affixed to the Seized Property, much of which is fungible bullion or cash.
3 It is for this very reason that the parties agreed to the Settlement, recognizing the expense and time of
4 litigation that would have, at best, uncertain results. The very purpose of the Settlement, like all
5 settlements, is to resolve a dispute. Here, there is a dispute as to the respective parties' interest in the
6 Seized Property. Absent a compromise, the only alternative would be litigation. It is practical, and
7 proper, under the circumstances for the parties to reach a reasonable compromise, as they have here.

8 The Pehls also object to the Settlement because they did not receive notice of Diane Erdmann's
9 bankruptcy filing, or her 341 meeting. The fact the Pehls did not receive such notice has no bearing
10 on the propriety of the Settlement.¹

11 The Pehls insinuate without evidentiary support that NWTM's storage customers and lease
12 customers have an interest in the Seized Property. Setting aside the fact that the Pehls have never
13 claimed an interest in the Seized Property in the three and one-half years since it was seized², there is
14 the additional problem that fungible bullion cannot be traced. Simply put, the Pehl's have no basis to
15 claim a personal interest in the Seized Property. Only the parties to the settlement have claims to the
16 Seized Property, and the Settlement will result in resolutions of disputed claims and recovery by the
17 NWTM estate, to the benefit of creditors.

18 The Pehls complain that the price that Bellevue Rare Coin is willing to pay is too low³. The
19 Pehls have not inspected the Seized Property. The Seized Property is worth what someone is willing
20

21 ¹ The Pehls complain that the NWTM Trustee's motion to convert Diane Erdmann's case from
22 Chapter 13 to Chapter 7 does not mention the creditors whose bullion was stolen. This assertion is
false. See Motion to Convert Case to Chapter 7, ¶¶ 5-6, Case No. 19-41238 [Dkt. No. 17].

23 ² The Pehls received a copy of the inventory of the Seized Property in their capacity as members of
the creditors committee in 2016, but have never asserted that any of that property belonged to them.

24 ³ The NWTM Trustee can only speculate that the reference in the Erdmann Trustee's motion to the
spot price of Gold being \$1,004/oz in May, 2016 was a typo. The valuations in the inventory
conducted at that time, as set forth at the top of the inventory, were correct. Gold was \$1,265/oz in
May, 2016.

1 to pay for it, and the relief sought in the Motion does not lock the parties into a sale with Bellevue
2 Rare Coin. The offer from Bellevue Rare Coin merely sets a floor, and the NWTM Trustee and
3 Erdmann Trustee are free to accept higher and better offers. The Trustees are soliciting and
4 entertaining other offers, and if a higher and better offer is received, the Trustees will accept it.

5 Finally, the Pehls object to the Settlement with respect to the Transfer Claims, complaining
6 that any recovery should not be split between the Erdmann estate and NWTM estate. Again, as
7 explained in the Motion, the NWTM Trustee and Erdmann Trustee have competing, and coextensive
8 claims, arising from the sale of coins and payment of law firms. While the NWTM Trustee would
9 prefer to have all recovery flow to the NWTM estate, he cannot ignore the fact that Erdmann Trustee
10 has coextensive claims under 11 U.S.C. §548 and RCW Ch. 19.40. Accordingly, the NWTM Trustee
11 and Erdmann Trustee reached a reasonable settlement regarding pursuit of these claims.

12 In sum, the Objection does not provide a basis to deny the Settlement and the Trustee requests
13 that the Settlement be approved.

14
15 DATED this 15th day of October, 2019

16 K&L GATES LLP
17
18

19 By /s/ David C. Neu
20 Michael J. Gearin, WSBA #20982
David C. Neu, WSBA #33143
Brian T. Peterson, WSBA #42088
21 Attorneys for Mark Calvert, Chapter 11 Trustee
22
23
24
25
26

K&L GATES LLP
925 FOURTH AVENUE
SUITE 2900
SEATTLE, WASHINGTON 98104-1158
TELEPHONE: (206) 623-7580
FACSIMILE: (206) 623-7022

CERTIFICATE OF SERVICE

The undersigned declares as follows:

That she is a paralegal in the law firm of K&L Gates LLP, and on October 15, 2019, she caused the foregoing document to be filed electronically through the CM/ECF system which caused Registered Participants to be served by electronic means, as fully reflected on the Notice of Electronic Filing.

I declare under penalty of perjury under the laws of the State of Washington and the United States that the foregoing is true and correct.

Executed on the 15th day of October, 2019 at Seattle, Washington.

/s/ *Denise A. Lentz*
Denise A. Lentz

RESPONSE TO PEHL OBJECTION - 4

K&L GATES LLP
925 FOURTH AVENUE
SUITE 2900
SEATTLE, WASHINGTON 98104-1158
TELEPHONE: (206) 623-7580
FACSIMILE: (206) 623-7022